

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance
(916) 322-5662

• • Administration • •
322-5660

• • Executive/Legal • •
322-5901

• • Enforcement • •
322-6441

• • Statements of Economic Interest
322-6444

February 2, 1984

William Huston
4640 Hillview Way
Sacramento, CA 95822

Re: Your Request for Advice
Our File No. A-84-002

Dear Mr. Huston:

This letter is sent in response to your letter of January 3, 1984, requesting advice from this office concerning Government Code Sections 87400-87405.^{1/} My understanding of the situation from your letter and our telephone conversations is as follows.

You were an employee of the California Energy Commission, a state agency, from 1975 until approximately December 1983. You were the manager of the Conservation Division's Technical Assistance Unit from April 1982 to June 1983 directing staff on appliance standards development and interpretations and residential building standards and compliance alternatives. Your responsibilities included:

1. Testifying before the Energy Commission, formally recommending and defending staff positions on the appliance and building regulations;
2. Reviewing recommended changes and alternatives submitted by private individuals, building industry representatives, and appliances manufacturers; and
3. Preparing written staff recommendations, subject to review by CEC management and input during public proceedings.

All petitions and regulatory issues that you worked on have been concluded by vote of the Energy Commission.

^{1/} All statutory references are to the California Government Code.

William Huston
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After you left the Energy Commission, you accepted a position with the California Building Industry Association ("CBIA"), a nonprofit organization serving 4,500 home builders throughout the state. Your primary responsibilities include government relations and coordination between CBIA and several state agencies including the Energy Commission. You anticipate that you will be involved in CBIA petitions to the energy Commission on several sections of the residential building standards.

Before you left the Energy Commission, you sought legal advice from William Chamberlain, General Counsel to the Energy Commission, concerning the application of Sections 87400-87405 to your situation. He advised you that these sections would have no effect on you since the proceedings you were involved in as an employee were not judicial or quasi-judicial and, in any event, these proceedings were no longer pending before the Commission.

We concur with Mr. Chamberlain's conclusion on the ground that regulatory proceedings such as you were involved in at the Energy Commission are not covered by Sections 87400-87405.

The only provisions of the Act which apply to former state employees who work in the private sector are Sections 87400 through 87405. The basic prohibition is found in Section 87401 which provides as follows:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof:

(a) By making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if;

(b) The State of California is a party or has a direct and substantial interest; and

(c) If the proceeding is one in which the former state administrative official participated.

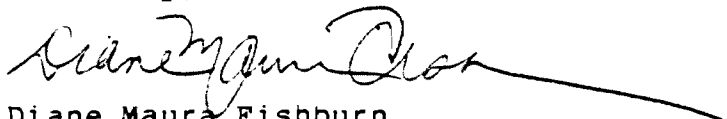
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Section 87400(c) defines "judicial, quasi-judicial or other proceeding" to mean "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency...."

Regulatory proceedings are not "judicial, quasi-judicial or other proceedings" within the meaning of Section 87401 if they involve the formulation of rules of general application to be applied prospectively and not the rights or claims of specific persons. The residential building standards are not directed at specific persons; they apply to industries involved in various aspects of home construction. Therefore, the regulatory proceedings you were involved in at the Energy Commission are not covered by Sections 87401 and 87402, and, the prohibitions contained in these sections do not place any limits on your present activities.

Please feel free to contact me at (916) 322-6444 if you would like to discuss this letter or if you would like further information or assistance.

Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh

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4640 Hillview Way
Sacramento, CA 95822
January 3, 1984

Fair Political Practices
Commission
P.O. Box 807
Sacramento, CA 95804
Attention: Barbara Milman

Dear Ms. Milman:

Bill Chamberlain, General Counsel at the Energy Commission, suggested I write to you requesting an interpretation on the applicability of Government Code Sections 87400 to 87405 regarding a job change I am considering. Mr. Chamberlain has spoken preliminarily with Robert Leidigh of your office who also suggested the advisability of this request.

I have been employed at the California Energy Commission since 1975. From April, 1982 until June, 1983, I was manager of the Conservation Division's Technical Assistance Unit directing staff on appliance standards development and interpretations and residential building standards and compliance alternatives. My responsibilities included:

- o testifying before the Energy Commission, formally recommending and defending staff positions on the appliance and building regulations;
- o reviewing recommended changes and alternatives submitted by private individuals, building industry representatives, and appliances manufacturers; and
- o preparing written staff recommendations, subject to review by CEC management and input during public proceedings.

All petitions and regulatory issues I worked on have been concluded as the result of a Commissioner vote.

Recently, I was offered a position by the California Building Industry Association (CBIA), a nonprofit organization serving 4500 home-builders throughout the state. CBIA was an active participant in the Energy Commission's building and appliance standards proceedings. As CBIA's Technical Director, my primary responsibilities would be government relations and coordination between CBIA and several state agencies including the Energy Commission. Over the next several years, I suspect CBIA will petition the Energy Commission on several sections of the residential building standards as its members begin to fully implement the various requirements and undoubtedly encounter unanticipated problems.

Ms. Barbara Milman
January 3, 1983
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My major CEC related responsibilities with CBIA would be:

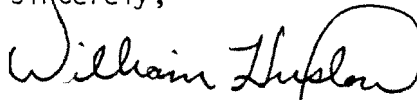
- o propose modifications of regulations when identified.
- o review CEC staff proposals.
- o testify before the CEC explaining the CBIA position on various issues.
- o maintain an ongoing relationship with CEC staff and commissioners.

Mr. Chamberlain believes the provisions of Government Code Sections 87400-87405 do not apply to me and that no conflict will result from my employment with CBIA. Specifically:

- o the Government Code provisions appear to apply only to "judicial, quasi-judicial", or similar judicial-type proceedings. I did not participate in any such proceedings at the Energy Commission.
- o proceedings subject to the provisions appear to be those which involve a specific party or parties. No regulatory proceeding I worked on involved specific parties, but rather general classifications of persons such as building designers, contractor, and appliance manufacturers.
- o all regulatory proceedings I worked on have been concluded by a vote of the Energy Commission.

Your concurrence with Mr. Chamberlain's conclusion is essential if I am to assume the duties of Technical Director at CBIA.

Sincerely,



WILLIAM HUSTON

Reviewed by:



BILL CHAMBERLAIN, General Counsel
California Energy Commission